

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re

MASON and JEWEL COOK,

No. 05-12491

Debtor(s).

MASON COOK,

Plaintiff(s),

v.

A.P. No. 08-1058

RAY BOLGER,

Defendant(s).

Memorandum After Trial

Defendant Ray Bolger is a truck driver and former employee of Chapter 11 debtor and plaintiff Mason Cook, who operated a towing business. In February of 2005, Cook and Bolger entered into an agreement whereby Cook would sell the business to Bolger. Pursuant to the agreement, Bolger gave Cook \$30,000.00 as a deposit. The sale was up in the air when Cook and his wife filed their Chapter 11 petition on September 13, 2005. Bolger was not scheduled as a creditor.

On October 15, 2005, apparently without the knowledge of bankruptcy counsel, Cook gave

1 Bolger a check for \$30,000.00 to return Bolger's deposit. However, the check did not clear. Ten days
2 later, on October 25, 2005, Cook gave Bolger a cashier's check for \$5,000.00 and promised to repay the
3 balance.

4 In July, 2006, Bolger wanted to purchase a Peterbilt truck from one Marc Opperman. Bolger
5 and Opperman and Cook entered into a three-way deal whereby Cook signed a note for \$25,000.00 to
6 Bolger, who used the note as part of his payment to Opperman. Under the three-way deal, not
7 disclosed or approved by the court, Cook would make his payments to Opperman and Bolger would be
8 given a security interest in one of Cook's tow trucks, a 2000 Freightliner.

9 On December 12, 2007, for reasons not clear, Bolger returned his Peterbilt truck to
10 Opperman. A few days later, on December 21, 2007, Bolger helped himself to Cook's tow truck,
11 falsely alleging that Cook was delinquent in his payments under the note. Bolger changed title of the
12 truck to his own name, and it remains in his possession. Bolger had full knowledge of Cook's
13 bankruptcy when he took the tow truck. He never complied with any of the provisions of California
14 law governing motor vehicle repossessions.

15 Cook's Chapter 11 plan was confirmed on December 9, 2008. The Chapter 11 case remains
16 open, and he and his wife remain (for now) debtors in possession.

17 It is of course difficult to do justice when neither of the parties before the court is entitled to
18 justice. Bolger is guilty of willful violation of the automatic stay for taking the vehicle without
19 obtaining bankruptcy court permission. Since the repossession was pursuant to a security interest in an
20 estate asset granted postpetition and without court order to secure a prepetition debt, it was also an
21 unauthorized postpetition transfer avoidable pursuant to § 549(a) of the Bankruptcy Code, as was the
22 \$5,000.00 cash payment. He is also very probably subject to prosecution pursuant to 18 U.S.C. §
23 152(5) by knowingly and fraudulently receiving property from a bankruptcy estate.

24 Of the two, Cook is by far the bigger wrongdoer. He played fast and loose with the bankruptcy
25 laws he invoked by filing a Chapter 11 petition. He failed to schedule his debt to Bolger. He
26 hypothecated estate property without court permission and failed to disclose his conduct in his

1 disclosure statement. His conduct clearly subjects him to prosecution pursuant to 18 U.S.C. 11 § 153
2 for embezzlement. He is certainly not fit to be a debtor in possession.

3 For the foregoing reasons, judgment will be entered against Bolger as follows:

4 1. Damages for conversion of estate assets in the amount of \$30,000.00, plus interest at the
5 federal legal rate from and after October 25, 2005 as to \$5,000.00 and from and after December 21,
6 2007, as to \$25,000.00.

7 2. Punitive damages in the sum of \$50,000.00.

8 3. Attorneys' fees and costs of suit.

9 Provided, however, that judgment will be entered in favor of the bankruptcy estate, not Cook
10 personally. All sums recovered, after payment of attorneys' fees, shall be distributed to creditors
11 holding allowed claims.

12 This memorandum constitutes the court's findings and conclusions pursuant to FRCP 52(a) and
13 FRBP 7052. Counsel for Cook shall submit an appropriate form of judgment forthwith.

14
15 Dated: November 23, 2009

16
17
18 
19 Alan Jaroslovsky
20 U.S. Bankruptcy Judge
21
22
23
24
25
26

1 **UNITED STATES BANKRUPTCY COURT**
2 **NORTHERN DISTRICT OF CALIFORNIA**

3 In re

4 MASON and JEWEL COOK,

No. 05-12491

5 Debtor(s).
6 _____ /

6 MASON COOK,

Plaintiff(s),

7 v.

A.P. No. 08-1058

8 RAY BOLGER,

Defendant(s).
9 _____ /

10 **CERTIFICATE OF MAILING**

11 The undersigned deputy clerk of the United States Bankruptcy Court for the Northern
12 District of California hereby certifies that a copy of the related document was mailed to all parties
13 listed below as required by the Bankruptcy Code and Rules of Bankruptcy Procedure.
14

15 Dated: November 24, 2009

V. Jump
Deputy Clerk

16 Raymond Bolger
17 P.O. Box 1313
18 Calistoga, CA 95415
19
20
21
22
23
24
25
26
27
28